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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 2nd April 1954

S.R.O. 1116.—Whereas the election of Shri Jagan Nath, as a member of the Legislative Assembly of the State of Delhi, from the Roshanara constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jaswant Singh, son of Shri L. Gulab Singh, 25/D, Kamla Nagar, Subzimandi, Delhi;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, DELHI

ELECTION PETITION No 10 OF 1952

(Election Petition No. 205 of 1952 before the Election Commission)

Shri Jaswant Singh—Petitioner.

Versus

Shri Jagan Nath & Others—Respondents.

JUDGMENT

The petitioner Shri Jaswant Singh was one of the candidates for election to the Delhi State Legislative Assembly from the Roshanara Constituency. His nomination paper, however, was rejected by the Returning Officer on the ground that the age given in the said paper did not correspond with the age given in the electoral roll. The election was later fought out principally between the first respondent Shri Jagan Nath and the third respondent Shri Ram Pershad and the former was declared to have been duly elected. The petitioner contends that the rejection of his nomination paper by the Returning Officer was improper and the result of the election had been materially affected. He has consequently filed the present petition for a declaration that the election of the respondent Shri Jagan Nath from the above mentioned constituency is wholly void.

The respondent Shri Jagan Nath contends that the nomination paper of the petitioner was not improperly rejected and that, in any case, the result of the election had not been materially affected by the alleged improper rejection. He also contends that the petition is liable to be rejected as the same had not been presented within time and further that the provisions of section 117 of the Representation of the People Act had not been complied with.

The following issues were consequently framed:

1. Was the petitioner's nomination improperly rejected and the result of the election materially affected by such rejection?
2. Was the petition not presented within time?
3. Have the provisions of section 117 of the Representation of the People Act, 1951 not been complied with? What is the effect?

Issue No. 1.—Two objections had been taken before the Returning Officer regarding the validity of the nomination paper of the petitioner, (i) that the age given in the nomination paper was 40 as against 49 appearing in the electoral roll and (ii) that the petitioner had not mentioned the name of the election agent. The latter objection was over-ruled by the Returning Officer and so far as the former is concerned he passed the following order:—

“I have seen the English copy of the electoral roll which clearly shows the age as 49. In the Urdu copy of the electoral roll also the age is given as 49. Although there is a little disfigurement in the digit ‘9’ in the Urdu roll, but the English roll clearly verifies it as 49. Since the candidate has filled his age as 40, and has not had it corrected, I accept the objection regarding age.....”.

It appears to us that the Returning Officer was clearly in error in taking the view that he did. There is no provision requiring that the description of the candidate in the nomination paper should literally agree with the description given in the electoral roll. The provisions are sufficiently complied with if the nomination paper contains adequate particulars to identify the candidate concerned. In the case before us all other particulars were correctly mentioned in the nomination paper and excepting the discrepancy in age there was nothing to suggest that the candidate before the Returning Officer was not the person mentioned at serial No. 31786 in the electoral roll. The identity of the petitioner was in fact never seriously in doubt. A difference of a few years in the age as given in the nomination paper and that in the electoral roll is of no consequence, when the question of eligibility is not involved. The rejection, therefore, of the petitioner's nomination paper was improper.

The question as to whether the petitioner in such a case, after establishing that his nomination paper had been improperly rejected, must further establish that the result of the election had been materially affected, has been considered in a large number of cases by various Tribunals both before and after the passing of the Representation of the People Act, 1951. In most cases the view taken is that improper rejection of a nomination paper is such a grave irregularity that it gives rise to a presumption that the result of the election has been materially affected and that this presumption would require the strongest and most conclusive proof for its rebuttal. The Lucknow Election Tribunal in Election Petition No. 208 of 1952 (*Brij Naresh Singh versus Hon'ble Shri Thakur Hukam Singh and others*) reported in the *Gazette of India, Extraordinary*, dated 20th December 1952 Part II, Section 3 at page 1029, went further and held that the presumption in question is irrebuttable, and once improper rejection of a nomination paper is established, it follows as a necessary consequence that the election must be declared to be wholly void.

The matter was also considered by this Tribunal in a number of cases, particularly in Election Petition No. 2 of 1952 *Shri Hans Raj versus Prof. Ram Singh and others* and the view taken was that it was as irrelevant to raise the question of chances of success of the rival candidate before a Tribunal as it would have been before the Returning Officer. The law assumes that every citizen, otherwise qualified to stand for election, has an equal chance of success with every other candidate. There are no presumptions in favour of propertied people, philanthropists or candidates with a record of public service. Whether a particular candidate is or is not the fittest person to represent a certain constituency is for the voters of that constituency to determine by secret ballot and the law does not contemplate at any stage substitution of the verdict of the electorate by the opinion of a Tribunal. The evidence led in such cases by the successful candidate is generally to the effect that the successful candidate was a person of great influence in the locality, that he had a record of public service to his credit whereas the rival candidate was an unknown person and had done nothing to deserve the confidence of the electorate. Assuming these facts to be satisfactorily established in a particular case, it does not necessarily follow that the voters would prefer the former to the latter. Such a conclusion will have to be based on a series of assumptions which need not necessarily be correct. There is for example no legal basis for the assumption that the voters would vote in a normal

manner or in a manner which enlightened public opinion within or without the constituency would expect them to do. The electors have not unoften been known to have voted in a capricious or even wanton manner if only to spite the so called 'favourite'. There is, therefore, in such cases, no legally admissible data on which a Tribunal can base a conclusion as to the probable chances of success of a particular candidate against another. The fact of the matter is that an election held in circumstances in which one or more qualified candidates are prevented from contesting the same by reason of the improper order of a Returning Officer is not an election as contemplated by law and consequently must in the words of section 100 of the R.P. Act be declared "wholly void".

Our attention was, however, invited to two or three cases decided by Rajasthan Tribunals in which the petitioners had lost their case in spite of a finding in their favour that the nomination papers had been improperly rejected. We prefer to adhere to the view taken in Hans Raj's case referred to above. In any case the presumption, even if rebuttable, has not been rebutted by the respondent in the present case. The evidence is all of the nature indicated in an earlier portion of this judgment. The respondent, we were told, is the biggest property holder in the area. He is running a large number of charitable institutions. His family had opened a High School and a Dispensary and donated lakhs of rupees for charitable purposes. The witnesses have also stated that in the municipal election, which had preceded the elections to the State Assembly, the Jan Sangh had lost to the Congress and ever since their popularity had been on the decline. But the most important of these witnesses, viz. R.W. 3, an Hony. Magistrate I Class has deposed that the petitioner is very popular in the *Kamla Nagar* area. He has also deposed that the largest number of voters of Roshanara constituency live in *Kamla Nagar* area. Apart, therefore, from the legal aspect of the matter emphasized above the evidence led by the respondent is not of a conclusive character and it is not possible to find as a fact that the election had not been materially affected by the improper rejection of the nomination paper of the petitioner.

The issue is consequently decided in favour of the petitioner.

Issue No. 2.—This issue was not argued before us and there is nothing to show that the petition was not presented within time. It is consequently decided against the respondent.

Issue No. 3.—This issue was also not argued before us. The petition recites that a sum of Rs. 1,000 had been deposited with the Reserve Bank of India, *vide* challan No. 1025, dated 25th April 1952. The respondent on whom the onus lay has failed to establish that the amount had not in fact been deposited. This issue is also decided against the respondent.

In the result the petition is allowed and the election of the respondent Shri Jagan Nath is declared to be wholly void. As the order of the Returning Officer was not passed at the instance of the contesting respondent, we leave the parties to bear their own costs.

Announced in open Court.

(Sd.) GURDEV SINGH, *Chairman.*

(Sd.) DURGA PRASAD NAIR, *Member.*

(Sd.) PARSHOTTAM LAL, *Member.*

The 31st March 1954.

[No. 19/205/52-Elec.III/7610.]

By Order,
C. L. GOYAL, Asstt. Secy.

